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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,766	03/22/2004	Mark Bergman	BERGO.008A	1254
20995 7590 06/01/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER RUNNING, RACHEL A	
			ART UNIT 3732	PAPER NUMBER
			NOTIFICATION DATE 06/01/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/805,766

Applicant(s)

BERGMAN ET AL.

Examiner

Rachel A. Running

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2 and 31 is/are allowed.
- 6) ☒ Claim(s) 3-11, 17-30, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference character 44. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 3-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. The ratchet member being flexible was not in the originally filed disclosure.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 3-8, 28, 29, 32, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergman (US 2002/0170570 A1).

Bergman discloses a hand-held flossing device comprising a housing having a handle portion (4) and a head portion (34) the housing supporting a floss supply comprising floss (30), a floss path (15), a floss advancement mechanism (22), and a stop mechanism (124) (see Figure 14). A wall (150) is disposed between the floss supply path and the floss return path in the housing head portion (see Figure 14; paragraph 51 and 52). A series of ratchet receiver members internally formed with the housing (see Figure 14). The floss supply path is defined within the housing between the floss supply and floss exit formed in the head portion, a floss return path defined within the housing between a floss entrance and the advancement mechanism (see Figure 14). The advancement mechanism-ratcheting member comprises a rotatable

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member having an axle (40), the rotatable member is disposed in the handle forwardly of the floss supply and the floss supply path extends past the rotatable member (see Figure 14; paragraphs 51 and 52). The stop mechanism comprises a friction lock (paragraph 48).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9-11 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman (US 2002/0170570 A1).

Bergman discloses the claimed invention except for the friction lock and advancement member being configured to apply between about 0-15 pounds of tension to the floss between the stop mechanism and the advancement mechanism, and the head of the flossing device being bent up to about 45 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the friction lock and advancement member be configured to apply between about 0-15 pounds of tension to the floss between the stop mechanism and the advancement mechanism, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only

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routine skill in the art. In re Aller, 105 USPQ 233. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the head of the flossing device be bent up to about 45 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

8. Claims 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman (US 2002/0170570 A1).

Bergman discloses a hand-held flossing device comprising a housing (4) with a handle portion, a head portion, wherein the head portion has an elongate back, a distal tine (86) extending downwardly and distally at an angle (see Figure 14; paragraphs 51 and 52). A floss (30) disposed in the housing and movable therethrough along a path, a portion of the floss exiting the housing through one of the distal (34) and proximal tines (86) and reentering the housing through the other of the distal and proximal tines (see Figure 14). A tensioning member (124) configured to selectively impart a tension on the floss (paragraph 51). An inner wall portion that directly supports the floss at the exit and entrance (see Figure 14). A floss take-up mechanism (40) configured to selectively advance floss from the floss supply and through the path, and a stop mechanism is configured to selectively grip at least a portion of the floss (see Figure 14). Bergman does not disclose the inner wall portion having a thickness at least twice the outer wall thickness, the take-up mechanism and stop mechanism being configured to impart at

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least 4 pounds of tension to the floss, the floss having a yield strength greater than about 20 pounds, and the maximum tension limit is less than about 15 pounds.

It would have been obvious to one having ordinary skill in the art to have the inner wall portion have a thickness that is at least twice the outer wall portion thickness, since thickening a wall to provide stability would only require routine skill in the art. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the take-up mechanism and stop mechanism be configured to impart at least 4 pounds of tension to the floss, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have a floss yield strength greater than about 20 pounds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the maximum tension limit be less than about 15 pounds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233

9. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergman (US 2002/0170570 A1) in view of Medal (US 5,861,072).

Bergman discloses that the housing of the flosser is fixed together by snap fit, however, Bergman does not disclose that the first segment comprises a pair of adjacent energy directors. Medal teaches that energy directors are a common practice used in sonic welding to melt when energy is applied to the segments so as to weld ribs together (column 2, lines 10-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the housing fixed together by a pair of adjacent energy directors configured to engage the inner wall portion of the second segment as taught by Medal in order to melt when energy is applied to the segments to weld the ribs together upon the application of energy.

Allowable Subject Matter

10. Claims 1, 2, and 31 are allowed.

Response to Arguments

11. Applicant's arguments filed March 16, 2007 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

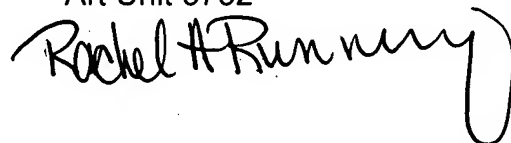
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rachel A. Running
Examiner
Art Unit 3732



Todd E. Manahan
Primary Examiner

